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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/004,138	10/23/2001	Ralf Eckert	LNUP:112_US_	8044

7590 06/17/2004

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EXAMINER	
NAGPAUL, JYOTI	

ART UNIT	PAPER NUMBER
1743	

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/004,138	ECKERT ET AL.	
	Examiner	Art Unit	
	Jyoti Nagpaul	1743	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-24 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-24 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 10/23/2001 is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 10/23/01.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernstein in view of Weyrauch.

Bernstein describes a system for performing a plurality of independent analysis procedures simultaneously, each procedure having a tissue sample and at least one process step for operating on that sample. Multiple process steps are done in parallel processes. The system comprises a robotic device for moving the tissue sample to various processing stations (13). The system includes a processor/computer (15), which selects the next tissue sample to move, when to move it, and where to move it. The tissue samples are mounted on sample carriers (slides). The robot moves the slides (540) through a plurality of workstations. There are three types of slide carriers (560, 600 and 630), which are specific to workstations. The robot moves the slides in and out of the slide carriers. (See columns 15-16, column 17, line 37 and column 19, line 39 and column 20, line 27)

With respect to Claim 1, Bernstein fails to disclose automatically monitoring the reagents of the processing stations, and taking into consideration definable parameters in the monitoring.

Weyrauch discloses an automatic chemical analyzer that includes a turntable (11) adapted to hold a plurality of disposable cuvettes (10). An optical system (14) adjacent to the turntable can perform analytical absorbance or fluorescence tests on the contents of each cuvette as they are rotated on the turntable. A sample/reagent tray (15) is rotatably mounted about an axis parallel to the turntable axis. A common probe arm (17) pivoted about a third parallel axis mounts a pipette that can be moved along an accurate path intersecting a cuvette access station (A) on the turntable and at least one container access station (C) on the sample/reagent tray for transferring liquids as required by specific test procedures. (See Figure 1-3, Columns 5-6, lines 56-24) The system also includes software, which is programmed to automatically read, identify and monitor different parameters in the system. Specifically, at column 10, lines 43-45, Weyrauch et al. teaches a means for monitoring content of the reagent containers. Further discussion of reagent monitoring is given at column 20, line 38, et seg.

It would have been obvious to one of the ordinary skill in this art at the time of invention by applicant to modify the system of Bernstein to include the features of Weyrauch in order to provide bar codes on reagent trays in order to automatically monitor said reagents of said processing stations, and take into consideration definable parameters in said monitoring in order to warn the operator that a reagent tray has been in use over too long a period to minimize error in the system.

With respect to Claims 2-7, Bernstein fails to disclose type of reagent, working life limit of the reagent, working life limit value, upper limit value and warning threshold value are defined as parameters and allocated to said respective processing stations.

Weyrauch discloses bar codes on reagent bottles, which are read by scanners that provide reagent identification data (type of reagent, working life limit value, upper limit value and warning threshold value). See column 20, lines 51-61. He also discloses that the operator can manually input any reagent-specific information such as working life limit selected from a predefined library into the system.

It would have been obvious to one of the ordinary skill in this art at the time of invention by applicant to modify the system of Bernstein to include the features of Weyrauch in order to catalog type of reagent, working life limit of the reagent, working life limit value, upper limit value and warning threshold value are defined as parameters necessary for efficient running of the system. These defined parameters will warn the operator to adjust or replace the reagent in order to minimize error and assist in attaining reproducible staining results of uniform quality.

With respect to Claims 8-20 and 24, Bernstein fails to disclose a step of monitoring the physical composition and fill level of the reagent contained in a respective processing station, a step of automatically refilling said processing stations with reagents based on data obtained through said step of monitoring, and a step of displaying said definable parameters and data detected and calculated from said monitoring. He also fails to teach the definable parameters and data detected from the monitoring are graphically displayed.

Weyrauch teaches monitoring of physical composition and fill level of reagents in reagent bottles with detectors. The system includes a capacitive sensing system for sensing of liquid levels by use of pipette/detector. Weyrauch also teaches the step of

displaying and said definable parameters and data detected and data collected from said monitoring such as fill level of the reagent, working life of reagent contained in processing station in terms of days since the last reagent change...etc.(See column 33, lines 45-50)

It would have been obvious to one of the ordinary skill in this art at the time of invention by applicant to modify the system of Bernstein to include the features of Weyrauch in order to monitor physical composition and fill level of the reagent in working stations and graphically display the data from the said monitoring. Further it would have been obvious to include the step of displaying the definable parameters and data detected and data collected from said monitoring such as fill level of the reagent, working life of reagent contained in processing station in terms of days since the last reagent...etc. graphically with symbols to their respective processing stations as used in Bernstein's teachings. It is obvious to include the features of Weyrauch because such would have assisted the operator to easily recognize and handle the sample containers. Such a modified system would have also achieved reproducible treatment results of identical quality. The data obtained in the context of monitoring could have served to initiate or control an automatic refilling or automatic replacement of the reagents.

With respect to claims 21-23, Bernstein fails to describe the step of providing an indication when said working life limit of said reagent at a processing station is exceeded and said indication includes a visual indication and acoustic indication.

It would have been obvious to one of the ordinary skill in this art at the time of invention by applicant to modify the system of Bernstein to include the features of

Weyrauch in order to describe the step of providing an indication when said working life limit of said reagent at a processing station is exceeded because this could serve to initiate or control an automatic refilling or automatic replacement of the reagents. The use of audible as well as visual, alarm systems is well known in the art of monitoring and contolling.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Nagpaul whose telephone number is 571-272-1273. The examiner can normally be reached on Monday thru Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JN

Jill Warden
Supervisory Patent Examiner
Technology Center 1700